

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY LEE JONES,
DANIEL E. BANKS, JAMES ROBERT CLARK, and
CARL HEINZ MEYER

MAILED

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2005-1990
Application No. 09/471,153

HEARD: NOVEMBER 16, 2005

Before McQUADE, NASE, and BAHR, Administrative Patent Judges.
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Jeffrey Lee Jones et al. appeal from the final rejection (mailed June 17, 2003) of claims 1, 4-6 and 8, all of the claims pending in the application.

This is the second appeal to this Board involving the instant application. The first appeal (Appeal No. 2002-1648)

resulted in a decision (mailed November 6, 2002) favorable to the appellants.¹

THE INVENTION

The invention relates to "a pneumatically actuated drum brake assembly for rear axles of heavy duty trucks" (specification, page 1). Representative claim 1 reads as follows:

1. A vehicle axle beam and drum brake assembly, comprising:
a pneumatic brake actuator cylinder provided with an actuator rod extending therefrom;
a brake actuating shaft having a first end and a second end;
a brake actuating lever interconnecting said actuator rod and said first end of said brake actuating shaft;
an S-cam secured to said second end of said brake actuating shaft;
a brake spider non-removably secured to said axle beam and adapted to support a brake assembly, said brake spider including a pivoting end support plate and an actuator support plate provided with an opening for receiving said brake actuating shaft therethrough;
a mounting sleeve having a first end and a second end, said first end of said mounting sleeve is secured to said pneumatic brake actuator cylinder and said second end of said mounting sleeve is secured to said actuator support plate of said brake spider, said brake actuating shaft rotationally supported and positioned within said mounting sleeve;

¹After the decision in the first appeal, the examiner reopened prosecution and ultimately issued the final rejection from which the instant appeal was taken. The record, however, does not show that the examiner ever obtained the written authority of the Director required by 37 CFR § 1.198 to reopen prosecution at that point.

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a pair of brake shoes pivotally supported on said pivoting end support plate of said brake spider, said brake shoes adapted to frictionally engage a bearing surface of a brake drum; and
a cam follower secured on each of said shoes and adapted to interfit with an outer surface of said S-cam,

wherein when said actuator rod is extended, said brake actuating shaft and said S-cam rotate about the longitudinal axis such that said brake shoes are brought into frictional engagement with said bearing surface.

THE REJECTIONS

Claims 1 and 4-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,476,968 to Urban et al. (Urban).

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Urban.

Attention is directed to the main and reply briefs (filed January 9, 2004 and August 26, 2004) and answer (mailed August 10, 2004) for the respective positions of the appellants and examiner regarding the merits of these rejections.

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DISCUSSION

I. The 35 U.S.C. § 102(b) rejection of claims 1 and 4-6 as being anticipated by Urban

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

As framed and argued by the appellants, the dispositive issue with respect to this rejection is whether Urban meets the limitations in independent claim 1 requiring the brake spider to be "non-removably secured" to an "axle beam."

Urban discloses a drum brake assembly having a brake support spider 14 which is "nonrotatably secured to portions of the vehicle by a plurality of suitable fasteners such as bolts (not

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shown) receivable through bolt circles holes 16" (column 3, lines 53-56). Urban further explains that

[t]he spider assembly 14 includes a stamped spider member 52 having a generally annular aperture 54 therethrough for receipt of an axle shaft or the like. Apertures 16 are provided on a bolt circle of a suitable pattern for attachment of the spider assembly to an axle housing or the like [column 5, lines 34-37].

The examiner submits (1) that the foregoing passages from the reference make it clear that Urban's spider plate is secured to an axle beam (see page 4 in the answer), and (2) that the bolts described by Urban serve to "non-removably" secure the spider to the axle beam (see page 5 in the answer).

Neither of these findings is well taken. The examiner has not cogently shown or explained, and it is not apparent, why a person of ordinary skill in the art would view Urban's brake spider to be secured to an axle beam merely because it contains an aperture for receiving an axle shaft and/or apertures for receiving bolts for attachment to an axle housing or the like. The examiner also has failed to cogently show or explain, and it is not evident, why the artisan would view such a bolted attachment to be non-removable. In short, the examiner's

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position that Urban meets the limitations in claim 1 requiring the brake spider to be non-removably secured to an axle housing rests on an unreasonable interpretation of both the fair teachings of Urban and the scope of the claim language at issue.

Hence, as applied by the examiner, Urban does not disclose each and every element of the subject matter recited in claim 1. Accordingly, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of claim 1, and dependent claims 4-6, as being anticipated by Urban.

II. The 35 U.S.C. § 103(a) of claim 8 as being unpatentable over Urban

Independent claim 8 differs from claim 1 in several respects. One difference is that claim 8 requires a brake spider which is "welded" to an "axle beam."

In rejecting claim 8, the examiner again finds that Urban's spider 14 is secured to an "axle beam," and further concludes that it would have been obvious to effect such securement by welding in view of "Official Notice that bolting or welding are

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old and well-known methods of securing a spider to an axle" (answer, page 4).

The examiner's determination that Urban teaches the spider 14 to be secured to an "axle beam" is unsound for the reasons expressed above in connection with the rejection of claim 1. Furthermore, Urban does not provide any factual basis to conclude that it would have been obvious to secure the spider to an "axle beam."

As for the "welded" limitation, the appellants have challenged the examiner's Official Notice that bolting or welding are old and well-known methods of securing a spider to an axle and the examiner has failed to respond to the challenge by advancing adequate evidence in support thereof (see MPEP § 2144.03). The examiner's reference to Urban at column 6, lines 44-47 (see page 6 in the answer) is not sufficient in this regard. The passage in question states that "[b]olt 120 may pass through the upper periphery of cam shaft tube 36 as is illustrated or may be welded to the upper surface of cam shaft tube 36 as is known in the art." This disclosure has nothing to do with the connection of the spider to the vehicle, does not

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substantiate the Official Notice that bolting or welding are old and well-known methods of securing a spider to an axle, and fails to demonstrate that it would have been obvious to connect Urban's spider plate to the vehicle by welding rather than bolting.

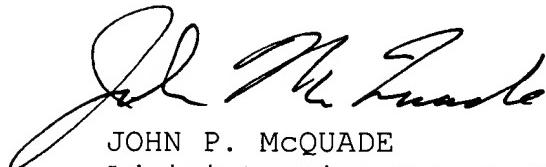
Thus, Urban does not provide the evidentiary basis necessary to conclude that the differences between the subject matter recited in claim 8 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. Consequently, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 8 as being unpatentable over Urban.

SUMMARY

The decision of the examiner to reject claims 1, 4-6 and 8 is reversed.

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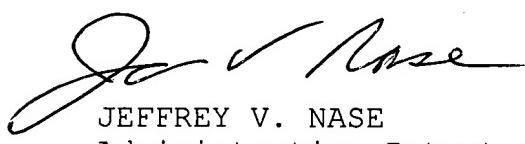
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JOHN P. MCQUADE
Administrative Patent Judge

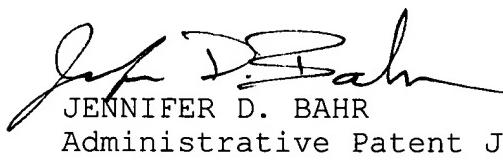
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